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into the Deployment of
Canadian Forces to Somalia



Commission d'enquête
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The Buck Stops Here


Reflections on Moral Responsibility, Democratic Accountability and Military Values

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a study prepared for
the Commission
of Inquiry into
the Deployment of
Canadian Forces
to Somalia

Arthur Schafer





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Contents

ACKNOWLEDGEMENTS vii

PREFACE ix

CHAPTER ONE — INTRODUCTION 1

A Conceptual Map of Responsibility 3

The Concept of Accountability 4

CHAPTER TWO — ROLE RESPONSIBILITY AND PERSONAL RESPONSIBILITY 5

Role Responsibilities 5

 The Problem of Diffused Responsibility 6

 The Weberian Model of Diffused Responsibility 6

Absolute Liability 9

 The Buck Stops Here 10

 Personal Responsibility and Blameworthiness 12

 Diffused Responsibility, Again: "I'm only a cog in the wheel" 12

 The Plea of Reasonable Reliance on Subordinates 13

 Ignorance as an Excuse 15

 Self-Induced Ignorance 17

 Information Filtration 17

Possible Corrective Measures 18

 Ignorance: A Mitigating or an Aggravating Factor? 19

 'A Wink and a Nod' 19

 The Responsibility to Monitor Compliance 20

**CHAPTER THREE — MINISTERIAL RESPONSIBILITY:
THE BRITISH PARLIAMENTARY TRADITION 23**

A Canadian Perspective 26

Applying the Foregoing Analysis 28

**CHAPTER FOUR — THE VALUES OF THE MILITARY IN A
DEMOCRATIC SOCIETY 29**

The Military in a Democratic Society: Values in
Conflict 29

Personal Integrity as the Highest Military Value 31

Concern for Image: An Armed Forces Pathology? 33
 Military Culture, Military Values, Military Ethos 33
 Image Obsession: The Problem of Misdirected
 Loyalty 34

Errors and Mistakes: The Need for a New Ethic 35

NOTES 37

APPENDIX I Editorial, *The Orb and Post*, Thursday,
August 22, 1996 41

APPENDIX II Letter from the Former Minister of Food to the
Commissioner, Royal Commission on the Food System in
Nordica 43

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Preface

Whosoever, in writing modern history, shall follow truth too near the heels, it may haply strike out his teeth.

Sir Walter Raleigh

Responsibility is a slippery and ambiguous concept, and accountability is scarcely less so. Thus, any discussion of the relationship between them promises to be a hard slog. All too often, when abstract ideas are permitted to dance exclusively with each other, they have a tendency to levitate into the stratosphere and there expire from oxygen deprivation.

In an ideal world, a discussion of responsibility and accountability would be anchored to current events. We should all be grateful that Canadian politics offers such a rich store of illustrative material. There are, nevertheless, advantages to stepping back from our preoccupation with all things Canadian, to gain some perspective. As George Orwell has noted, the hardest things to see are those right in front of our nose.

I shall therefore take most of my initial examples not from Canadian politics but from current events in Nordica. Nordica is not far from Canada, and in many salient respects its political life bears a strong resemblance to our own.

Nordicans have recently faced crises with the purity of their food supply (the infamous tainted tomato juice scandal) and with allegations of police brutality and subsequent high level cover-up. Coincidentally, the government of Nordica, like the government of Canada, when confronted with public concern about the integrity of important national institutions, has the tendency to appoint an independent inquiry to investigate whether the problem is one of individual failure (rotten apples) or systemic failure (rotten barrels). Thus, we have our Krever and Létourneau inquiries; Nordica has its Beaver and Turner inquiries. In Nordica, however, inquiry commissions are allowed to complete their mandates.

Finally, as one would expect, Nordica, like Canada, is blessed with a national newspaper whose editorial comments both reflect elite opinion across the nation and help to shape that opinion. The national newspaper of Nordica is called *The Orb and Post*. I shall have occasion to quote quite extensively from one of its lead editorials on responsibility and accountability, especially as these ideas apply to the key participants in the twin scandals.

Introduction

Former Nordican minister of food, Ms. Maya Culpa, received plaudits from editorial writers across the country when she volunteered to take her “share of responsibility” for the health disaster of tainted tomato juice. By contrast, Adam Antine, Chief Commissioner of Police, was pilloried by these same editorial writers when he attempted to transfer responsibility to his subordinate officers for an alleged cover-up of police brutality and murder.

What seemed obvious to so many editorial writers — that Ms. Culpa’s behaviour was morally praiseworthy while that of Chief Commissioner Antine was not — provides a useful point of departure for a conceptual analysis of the ideals of responsibility and accountability. For, as we shall see, reaction to the behaviour of these two leaders reveals how easy it is to leap hastily to conclusions about the responsibility and blameworthiness of public officials.

The sentiments expressed by *The Orb and Post*, in a lead editorial entitled “A return to ministerial responsibility”, were representative of both elite and popular opinion. The centrepiece of *The Orb*’s article was an invidious comparison between the purportedly virtuous behaviour of the former minister of food and the less commendable behaviour of the former chief commissioner (see Appendix I for the complete text of the editorial).

“The question,” according to *The Orb*’s editorialist, “is Chief Commissioner Antine’s responsibility as the top officer in the national police force, and his willingness to accept responsibility for what happened on his watch.”¹ What seemed most to offend *The Orb* was Commissioner Antine’s view that he was not blameworthy for a document-tampering cover-up because of his claimed ignorance of it. Almost as bad, from their point of view, was the fact that he excused his own ignorance by attributing it to the culpable failure of his subordinate officers, whose lack of “integrity” resulted in a failure to inform him of serious wrongdoing.²

Ms. Culpa, by contrast, is praised enthusiastically by The Orb (“courageous”, “inspiring”) for declaring in an unsolicited letter to the tainted food inquiry that, as the cabinet minister in charge of Nordica’s food supply during the period when the tainted juice problem originated, she should not be absolved of responsibility (see Appendix II for the complete text of Ms. Culpa’s letter).

The Orb admiringly reprinted her declaration that

Justice is offended if people at the top of government in bureaucratic structures are not held responsible for their actions, but employees at less senior levels of the hierarchy are. Moreover, public ethics requires that those at the top be accountable.

From all this, The Orb concluded that “the people at the top are ultimately responsible for the actions of all those under their authority”, to which it added, as a coda, “especially in the police”.³ This sentiment was echoed by editorial writers in virtually every city in Nordica and was duly reflected in the letters to the editor columns of regional newspapers.

As is often the case when complicated philosophical questions are the subject of public debate, subtleties, ambiguities, and genuine difficulties were overlooked in the rush to praise Ms. Culpa and condemn Chief Commissioner Antine.

If The Orb’s editorial writers had read Ms. Culpa’s letter more attentively, for example, they might have noticed that, far from willingly accepting personal responsibility (in either the causal or the blameworthiness sense of the term ‘responsibility’, discussed below), Ms. Culpa insisted strenuously that neither she nor any other member of her department bears personal moral responsibility for the tragedy that occurred. Indeed, she insisted — despite some contrary evidence — that “my Department in general are blameless”. She continued, in her letter, to absolve even those departmental officials warned by the tainted food inquiry that they could be individually named as blameworthy for actions and omissions that contributed significantly to the toxic food scandal.

To understand what is really at stake in this discussion, we need to articulate and analyze some important conceptual distinctions, in particular, the different senses of the terms ‘responsibility’ and ‘accountability’. It will also be necessary to analyze carefully the propriety of allowing the plea of ignorance — “I didn’t know” — to excuse public officials from blame when things go wrong in the organizations they lead.

A CONCEPTUAL MAP OF RESPONSIBILITY

As the discussion thus far has illustrated, the term 'responsibility' is ambiguous, and this ambiguity can easily result in confusion and misunderstanding.⁴ Some of the main senses of the term are as follows. When we say that a person has 'responsibilities', often we mean that she has duties or obligations. Sometimes when we say that a person (or thing) is 'responsible for' the occurrence of an event, we mean that the person (or the thing) caused the event to happen. When we praise someone as a 'responsible person', we usually mean that she is reliable or trustworthy. When we say of one person that she is 'responsible to' another person, we mean that she is answerable or accountable to that other person. Finally, when one person (let us call the person Castle) holds another person (Rook) morally responsible for the occurrence of an event, what is meant is that Castle believes that Rook deserves praise or blame, reward or punishment.

Although this is a subject of much philosophical controversy, according to one standard view, we are warranted in saying that Rook deserves or merits praise or blame from Castle for doing or failing to do something (X) if and only if several things hold true. It must be true that Rook caused X; that Rook had a duty with respect to the doing of X; that Rook is accountable to Castle for the doing of X; that X is an event or state of affairs that is beneficial (good) or harmful (bad); and that Rook has no adequate defence or excuse regarding X, such as non-culpable ignorance.

This conceptual map becomes more complex when we attempt to analyze in detail what it means to say that someone 'caused' an event to happen, or contributed causally through action or omission to the occurrence of the event. It becomes more complex still when we take into account the various verbs used in connection with responsibility: for example, taking, receiving, accepting, exercising, refusing, and absolving from responsibility. Setting aside these additional complexities, it is hoped that the conceptual framework just provided will facilitate analysis of the central problems and enable us to locate feasible solutions to those problems.

It should also be noted that although responsibility discourse is heavily normative, judgements of responsibility are not always judgements of morality. For example, when we say that the dirty carburetor was responsible for the car not starting, we are scarcely making a moral judgement.⁵

THE CONCEPT OF ACCOUNTABILITY

Although there is an important connection between accountability and responsibility, the terms are frequently conflated in a manner that produces more muddle than enlightenment.⁶

When Rook is said to be accountable, what is usually meant is that Castle can impose upon Rook the duty to give an account. If Rook is accountable to Castle, then Castle has the right to demand an account. In other words, in certain contexts, the duty sense of 'responsibility' corresponds to the notion of accountability. Thus, if one is chief commissioner of police when something seriously untoward occurs in the police force, one's responsibilities (duties) include giving an account to one's civilian supervisors explaining what went wrong.

But note: to say that someone, for example, Chief Commissioner Antine, is 'accountable' does not automatically entail either the attribution of guilt or the ascription of blame. One very important reason that organizations introduce accountability systems is to discover, when something goes wrong, the answer to the question of whether there is any fault to which blame can be attached. Similarly, when things go right, an accountability system should facilitate the discovery of whether there is any meritorious behaviour to which praise can be attached.

Moreover, when an official 'takes responsibility' for the occurrence of an untoward event, this could involve admitting any of several quite different things: that some harm has occurred; that the official in question was part of the causal nexus (by commission or omission) leading to the harm; and/or that the official was at fault (blameworthy). Sometimes, taking responsibility means nothing more than confirming that the official was indeed in charge at the time the event took place. An assessment of whether the official is accepting the appropriate level of responsibility or blame is obviously more complex than it might at first appear.

It is also worth noting that when blame is involved, the blame need not be *moral* blame. Thus, for example, the official who takes responsibility and admits blameworthiness may be admitting to non-culpable stupidity or incompetence, rather than to moral turpitude or legal fault.

Blameworthiness, moral and non-moral, and excusing conditions, are discussed in some detail below.

Role Responsibility and Personal Responsibility

ROLE RESPONSIBILITIES

Each of us assumes, voluntarily or involuntarily, many different roles in the course of our lives; with each role comes a set of responsibilities (duties, obligations). We have responsibilities to our aging parents because we are their adult children and have, typically, benefited from their sacrifices on our behalf. We have responsibilities to our own young children because they depend on us for their well-being and because we brought them into the world or chose to adopt them. We have responsibilities as citizens in a democratic society, as employees or employers, and so on.

Consider, for example, the captain of a passenger ship. The captain, *qua* captain, has a variety of role responsibilities, including the duty of guiding the vessel safely and efficiently to its destination, choosing well-trained crew members, monitoring to ensure that their responsibilities are performed adequately, and assuring the comfort and satisfaction of the passengers. If the number of crew members is larger, the captain will almost certainly delegate some supervisory responsibility to subordinate officers. When this occurs, the captain's own supervisory role responsibility consists in choosing the right personnel as officers and monitoring their performance of the responsibilities delegated to them. But a captain who delegates authority to carefully chosen subordinates is not absolved of the role responsibility assumed when the captain received the authority to captain the ship.

The captain, by virtue of being captain, is also responsible if things go wrong, for giving an account to those affected, who could be any or all of the passengers, the crew, the owner(s), the insurers, or government inspectors. If the ship sinks, the captain's role may require him to collect all available evidence, make an authoritative finding of the material facts

and, where appropriate, accept blame, allocate blame to others, and/or make amends.

A ship is a large hierarchical organization, which in turn may be part of a much larger hierarchical organization, the shipping company, which in turn may be part of a still larger hierarchical organization, say, a multinational corporation. Similarly, the Nordican police force is a large hierarchical organization that is part of a still larger hierarchical organization, the government of Nordica. Clearly, the complexity accompanying elaborate hierarchical organization can pose a challenge to those whose task it is to unravel the truth about what went wrong and why.

The Problem of Diffused Responsibility

When things go wrong in large organizations, it is often exceedingly difficult to discover who, if anyone, is blameworthy. It may often be difficult even to ascertain who is accountable, in the sense of having an obligation (role responsibility) to explain what caused the problem and how it can be solved or remedied.

It is scarcely surprising, therefore, that in a democratic society there is a marked tendency for citizens to become disillusioned, even cynical, when there seems to be no effective way to connect their criticisms of governmental action (or inaction) with identifiable public servants who are responsible for correcting problems. Whether the problems are systemic or particular, we want to know at least who is in charge and, perhaps also, who is to blame.

Policy formulation in large organizations is typically a process in which many people participate, up and down the bureaucratic ladder. Thus, it may be difficult or impossible to discover whose individual contribution to the bad outcome was both faulty and sufficiently important to warrant attribution of blame. The same problem arises, of course, when we attempt to distribute praise for meritorious contributions.

What is true for policy formulation is equally true for policy implementation: when many people have contributed to the outcome, assigning moral responsibility is difficult.

The Weberian Model of Diffused Responsibility

According to the Weberian model of hierarchical responsibility, such moral responsibility as exists within a bureaucratic organization, whether governmental or private, falls almost exclusively on those at the pinnacle of

authority. The boss is the ‘head’ and everyone else is one of the ‘limbs’. In this model, subordinate officials in a large organization would be absolved of moral responsibility for the consequences of their actions, so long as they “execute conscientiously the order of the superior authorities”.⁷ The higher one’s position in the chain of command, the greater one’s responsibility.

Ms. Culpa seems to have something like the Weberian picture in mind when she expounds her view of “justice” and “public ethics” in her letter to the tainted tomato juice inquiry.

Elements of this model can still be found, vestigially, in some corporate thinking, in the law of master and servant, and in the doctrine of ministerial responsibility, discussed below. There are, however, at least two serious difficulties with this way of thinking about moral responsibility and accountability in large and complex organizations. The first is that it glosses over the very considerable extent to which officials below those at the very top of the hierarchy do have discretionary authority and do wield discretionary power in bringing about outcomes. Thus, it too easily absolves subordinates of moral responsibility — blame and praise — for the way they exercise discretionary power and authority. Was Hitler the only one morally responsible for the slaughter of millions of innocents? This question is itself a *reductio ad absurdum* of any unqualified Weberian position.

The second serious difficulty emerges when we reflect upon Ms. Culpa’s less-gracious-than-it-first-appears offer that “if you were to have to lay blame, I consider it my duty to take my share of responsibility”.⁸ The word “if” manages to suggest what it does not openly assert — that no one is really morally blameworthy for the tragedy that occurred. It was, perhaps, the unintended product of what is understood to be the way the system works, for which dysfunction no one is responsible. Or it was an act of God, for which only the divine being is responsible.

Of course, sometimes when a tragedy occurs, it truly is the case that no one is to blame. Even with the best will in the world, events are sometimes uncontrollable and tragedy is sometimes unavoidable. When the situation is extremely complex and our knowledge is both limited and uncertain, and when many agents contribute to the decision-making process, then it may be true that no one is to blame. Alternatively, someone or some group of actors may be to blame, but it may be practically impossible to ascertain who they are or the exact extent of the blameworthiness appropriately assigned to each.

The strong conclusion that “no one is to blame”, or the weaker conclusion that “we cannot discover who is to blame”, might be regarded as the conclusion(s) of last resort. Either directly or through their legal representatives, the Nordican public and, most especially, the victims of tainted juice and their families are extremely eager to discover who was responsible (causally) for the failures that caused their tragic losses and who, if anyone, was to blame. The same demand is present with respect to the police brutality case and the subsequent cover-up of police wrongdoing. In both cases, the public is surely owed the most diligent, thorough, and honest inquiry into all available evidence. Only if such an inquiry fails to identify who or what was responsible for the tragedy would one be justified in adopting an attitude of resignation.

The public interest in learning the truth about responsibility for these tragedies is of such significance that the greatest possible efforts should be made to ascertain what went wrong and who, if anyone, was to blame. Only in this way will the first step be taken toward restoring confidence and trust in the integrity of the Nordican police force or the integrity of Nordica’s food supply.

Significantly, the politicians of Nordica — past and present, federal and provincial — and top officials from the various governments and agencies charged with safeguarding the food supply all eschew both legal liability and personal moral blameworthiness for what happened.

Paradoxically, Ms. Culpa, the one politician who stepped forward to accept “my share of responsibility”, appeared to succeed, perhaps unintentionally, in drawing attention away from her concomitant refusal to accept personal moral responsibility. It no longer seemed necessary to offer any detailed reply to critics who accused the former minister of food of having responded slowly and weakly to early evidence of danger. Justice was satisfied. The case could be allowed to rest.

It might have been expected that Ms. Culpa, as the cabinet minister responsible for assuring the safety of the food supply, would recognize her duty (role responsibility) as being to give a detailed public accounting of what went wrong and who was responsible (in both causal and blameworthy senses). Instead, Ms. Culpa uttered words of ritual incantation: “[I]f you were to have to lay blame, I consider it my duty to take my share of responsibility.” Many will find this a disappointing substitute for genuine democratic accountability, perhaps undeserving of The Orb’s epithets “courageous” and “inspiring”.

To this point in the discussion, I have focused on the case of Ms. Culpa’s sleight-of-hand acceptance of moral responsibility for Nordica’s tainted

juice tragedy. The reason for adopting this focus as a starting point is that her words, and the public response they evoked, provide a paradigm illustration of how confusion surrounding the concept of responsibility can deflect attention from the real moral issues. As we will see, when attention is focused more particularly on Chief Commissioner Adam Antine and the issue of his responsibility for police brutality, murder, and an alleged cover-up, the case of Ms. Culpa has strong resonances for that of Chief Commissioner Antine.

ABSOLUTE LIABILITY

As just illustrated, acceptance of role responsibility (duty) can become a shield behind which high-level officials hide their refusal to accept personal responsibility. This rhetorical ploy can succeed, however, only if role responsibility is construed in its narrowest sense, the sense that lawyers denominate by the phrase *absolute liability*.

The eminent British jurist, H.L.A. Hart, has argued forcefully for the view that

those whom we punish should have had, when they acted, the normal capacities, physical and mental, for doing what the law requires and abstaining from what it forbids, and a fair opportunity to exercise these capacities.⁹

From both the moral and the legal point of view, we are reluctant to blame and punish people, even when they have caused serious harm to others, if they did not have a fair opportunity to do otherwise.¹⁰

There is, however, a large and growing number of absolute liability offences in British jurisprudence and a large though shrinking number in Canada. These offences comprise legal conduct for which one can be criminally convicted even if one did not have a fair opportunity to do otherwise. Absence of the standard mental conditions of criminal responsibility (for example, intention, foresight, recklessness) does not excuse a rule breaker when the offence is one of absolute liability.

In Britain it is not a defence to most traffic offences — for example, exceeding the speed limit or going through a red light — that one did not mean to do it, that one did not know that one was speeding or that the light was red, or that one did not see the speed restriction sign or the red light. Thus, even if a motorist took every reasonable precaution against speeding, including frequent mechanical checks of the accuracy of the car's speedometer, if the speedometer gives an incorrect reading and the

motorist is thereby led to violate the speed limit inadvertently, the motorist is legally guilty, notwithstanding his moral innocence.

It may be morally unfair to convict persons of speeding when they honestly believed that they were conforming to the speed limit — and still more unfair when they have taken every reasonable precaution to avoid breaking the law. But for a variety of practical reasons, a number of countries have decided, with respect to motoring offences, to convict those who do the forbidden act even when they lack *mens rea* — a guilty state of mind.

The principal rationale for disallowing excuses such as “I didn’t know” or “I didn’t mean to” has to do with problems of proof and difficulties of enforcement. It would be difficult and expensive to establish conclusively the intentions or knowledge of all motorists who violate traffic laws. It would be almost as difficult to prove that a motorist failed to take reasonable precautions. Additionally, it is hoped that when an offence is one of absolute liability — one for which lack of *mens rea* is no excuse — those potentially affected will take the most stringent precautions to avoid conviction. Thus, considerations of administrative efficiency, together with a desire to promote the highest possible standards of care among motorists, sometimes win the day over considerations of fairness.

Nevertheless, it is important to note that when one is convicted of an absolute liability offence, the legal penalties are, generally, comparatively lenient — for example, a small fine rather than a prison term. Very little, if any, moral obloquy attaches to a conviction in this circumstance.

The Buck Stops Here

In light of this discussion, consider again the political leader or high-level public official who ritualistically utters such formulaic words as Harry Truman’s “The buck stops here”, or “I am fully responsible”, or “I am accountable.” We are usually meant to understand this responsibility as being of the absolute liability sort: a liability or responsibility that imputes no *mens rea* and no personal failure and thus carries with it very little moral blame, if any.

Ironically, such admissions are often a wonderfully effective means of avoiding a genuine admission of personal moral responsibility for negligence or incompetence or malice. Thus, they often serve the politically useful purpose of curtailing efforts to investigate who, if anyone, from top to bottom in the organization, was genuinely morally blameworthy. As an ancillary bonus, the government minister or high-level official who declares publicly that “the buck stops here” earns the gratitude of

subordinates and praise for moral courage from the more naïve members of the public.

In this connection, it is instructive to read the following interchange between the chair of the Turner commission on police misconduct and Chief Commissioner Antine:

The Chair: I'm just asking generally if subordinates commit some wrongdoings and their superior says, "they were under my supervision and I am responsible for that and, therefore, I'm accountable". What follows thereafter? Beyond these empty words, saying "I'm responsible, accountable", what does that mean in practice to an officer like that?

The Chief Commissioner: Did the superior — was he informed? Did he put in place the proper measures to stay informed? If he did put in place the proper measures to stay informed and he was not informed, the responsibility and accountability is for him to do so, to put in place the proper mechanisms. I mean, if he didn't put in place the proper mechanism, he has failed. But if he did, then he must ensure that as a follow-on they are complied with.

In this passage both the commission chair, Madam Justice Jill Turner, and the witness, Chief Commissioner Antine, show that they understand that political accountability requires more than simply uttering the words "I am accountable" or "I am responsible". As the chair says, such words could be "empty" of real content. It is not adequate simply to acknowledge one's role responsibility if this means that one is absolved, automatically and without investigation, for failures to perform such further role responsibilities as promulgating proper policies, creating among one's subordinates a culture of respect for those policies, and diligently monitoring compliance.

In other words, Chief Commissioner Antine himself acknowledges and endorses, in response to prodding from the chair of the commission, the proposition that the role of a top official, whether chief commissioner of police or deputy minister, requires the performance of an important set of responsibilities — including *ab initio* the formulation of appropriate policies and, subsequently, careful supervisory follow-up to ensure that those policies are being implemented conscientiously by subordinates. The voluntary admission of mere 'role responsibility' by an official should not be allowed to deflect investigative attention from any concomitant denial of personal moral responsibility.

Personal Responsibility and Blameworthiness

Traditionally, individuals are not held to be morally responsible (blameworthy) for their conduct unless they do the forbidden act (referred to by lawyers as the *actus reus*) in the appropriate mental state (with what jurists call *men rea*). To prove that I am guilty, whether in law or in morals, you must demonstrate that an action of mine caused or causally contributed to the occurrence of the wrongful act in question (for example, I tampered illegally with a document, ordered my subordinate to alter the document, or deliberately ignored such conduct) and also that I did the forbidden conduct in a certain state of mind: deliberately, knowingly, intentionally, or, at the very least, negligently.

In the traditional view, I am fully morally responsible only for those of my voluntary actions for which I have a 'guilty mind', that is, only for actions done in the appropriate mental state. For this reason, when the offence in question is a serious one, our system of criminal law almost always requires the presence of *mens rea* as well as the doing of the *actus reus*.

Diffused Responsibility, Again: "I'm only a cog in the wheel"

If I am acting as only one part of a large organization — a cog in the wheel — and many other people have also contributed culpably to produce a bad outcome, some would argue that neither I nor anyone else is individually responsible. Others want to say that everyone who contributed in any way is equally morally responsible.¹¹

A more reasonable position is that all and only those whose culpable actions contributed to produce the harm are responsible (blameworthy). Moreover, each is responsible proportionately to the degree of his/her particular contribution to the outcome. Those who make the greatest culpable contribution deserve the greatest blame; but all who contribute, by their culpable actions or omissions, bear some responsibility.

This is a traditional line of moral reasoning, and it would seem to follow from it that officials at the top of the bureaucratic hierarchy will often bear the heaviest moral responsibility when things go wrong, by virtue of their greater power and authority.

If one applies this analysis of moral responsibility to the case of Chief Commissioner Antine and what has become known as the Policegate Affair, several inferences can be drawn. When Chief Commissioner Antine testified before the Turner commission into Policegate about the issue of

his possible resignation, he insisted that "if senior officers resigned every time their subordinates made an error, there would never be any leadership." Presumably, the point that Chief Commissioner Antine had in mind here was that in any very large organization, there will be innumerable occasions on which subordinates make errors. Human beings are fallible, and this fallibility does not vanish when they don the uniform of the Nordican national police force. Minor mistakes are frequent in any organization. Even systemic breakdowns can be expected from time to time. Hence, Chief Commissioner Antine's point: if those at the top of the bureaucratic hierarchy are found blameworthy and asked to resign every time an error, even a serious error, is made by a subordinate, we would need a constantly revolving door to accommodate a rapid succession of leaders.

Almost as worrying, though not mentioned by Chief Commissioner Antine in his testimony, such a policy could be expected to induce an excessively cautious frame of mind on the part of both leadership and subordinates. In turn this might tend to inhibit the scope for bold initiatives, thereby prejudicing the effective conduct of the organization's business. The organizational disposition encapsulated by the commandment "First, cover your ass" is scarcely conducive to healthy group functioning.

It would seem to follow from this discussion that a chief commissioner who places "a reasonable reliance" or "reasonable expectations" on his subordinate staff should not be held morally blameworthy when subordinate staff members misconduct themselves. This conclusion needs to be modified, however, in a small but potentially significant manner. Superiors in a hierarchy should not *automatically* be held morally blameworthy for the misconduct of their subordinates. One is not blameworthy merely because something has gone wrong. A bad outcome (*actus reus*) generates blameworthiness for the official(s) responsible only when a number of additional conditions have also been met. There will be more to say about these additional conditions later; at this point I will simply sketch some of their content.

The Plea of Reasonable Reliance on Subordinates

A chief commissioner of police has considerable power and authority to select and promote immediate subordinates and is influential in personnel decisions throughout the organization. Top officials not only appoint individuals to positions but also set the basic criteria for appointments and promotions. Thus, if individuals lacking in "moral fibre" or "integrity"

are appointed to or are permitted to continue in top positions, those responsible for (the continuation of) their appointments may be blameworthy for failing to establish proper appointment criteria or for failing to apply the criteria with due care and diligence.

The very significant issue of the culture of the police and the military is discussed in some detail later, especially as it relates to issues of democratic accountability. At this point, it can simply be noted that high-level officials, such as chief commissioners, have a significant role responsibility to establish in their organizations an ethical culture appropriate to the police or to the military in a democratic society.

It may not be sufficient, therefore, for Chief Commissioner Antine to insist that the reliance and expectations he placed on his senior officers were "reasonable". Role responsibility, for a person in Chief Commissioner Antine's position, requires that he provide evidence pertaining to his efforts to create a police culture of democratic accountability. If, as some believe, he inherited an organization marked by a culture of concealment and duplicity¹² rather than one of openness and honesty, then it was his responsibility to clean house. He could have demonstrated, for example, in a variety of ways to his colleagues in the police that he was genuinely committed to the value of democratic accountability. He could have reassigned or dismissed incorrigible personnel. He could have changed promotion and appointment criteria to emphasize the high value he placed on moral integrity. He could have demonstrated his concern and commitment through his words and through his actions.

Small mistakes on the part of subordinate officials can be expected to occur frequently, even in well-managed organizations. When they do, it is the responsibility (duty) of the executive officer(s) in charge to correct them promptly. Major or repeated breakdowns, however, may be a sign that the executives whose responsibility it is to ensure the good functioning of the organization are failing to perform their duty properly.

Let us suppose (and there is evidence to suggest that this supposition may be true), that the Nordican police force has been seriously deficient, over a long period, in the areas of openness and honesty. If this were the case, continuation of this deficiency could be seen as *prima facie* evidence that Chief Commissioner Antine either did not notice this problem or did not make adequate efforts to correct it. From the preceding analysis it would seem to follow that if Chief Commissioner Antine did not notice the problem or did not understand its gravity, he may have been guilty of negligent performance of his duty; or, if his efforts to correct the

problem were inadequate, then his job performance might be deemed to have been unsatisfactory.

Although the gravamen of Chief Commissioner Antine's self-exculpatory argument can be summarized as "I relied upon my subordinates and they let me down", his own further testimony shows why this argument, taken by itself, lacks cogency.

In his testimony before the Policagate inquiry, for example, he acknowledges that officers (such as himself) possessed of command authority, "have an ability and necessity as leaders to foresee, to continuously assess and to take proactive action where necessary in order to remedy and in order to change against the changing times." At this point in his testimony, the Chief Commissioner appears to recognize that leadership carries with it the responsibility to recognize and anticipate possible problems and to deal with them prospectively. However, a moment later he loses his grip on this important point and seems to revert to the view that when an officer is unaware of a failure of those lower in the chain of command, that lack of awareness counts as a complete excuse:

Above that, it is those that oversee policy and policy implementation. And certainly they should be held accountable if individuals below them are not implementing the policy in the proper fashion *and are aware of it*. (emphasis added)

Although the meaning of this sentence is difficult to discern through the tangled grammar, it makes sense only if "and are aware of it" is understood to apply to the superior policy-setting officials rather than to the subordinate policy-implementing officials. In other words, Chief Commissioner Antine appears, at this point in his testimony, to have fallen back to his earlier position that when a commanding officer is unaware that his subordinates have failed to implement policy properly, the commanding officer is not responsible (in the sense of being blameworthy or being personally morally responsible).

Ignorance as an Excuse

Those accused of responsibility for a harmful outcome frequently plead, as an excuse, that they were ignorant. To take a current Canadian example, when blame for the recent riot at Headingley jail in Manitoba was attributed to the provincial minister of justice, Ms. Rosemary Vodrey, she offered the defence of ignorance. Despite numerous prominent newspaper

stories, over a period of years, detailing serious problems at the jail, the minister of justice claimed insistently that she “just didn’t know” that there were serious problems of safety and morale. She and the premier of the province invited the public to accept this claim as a robust defence, rather than as an admission of blameworthy failure. Their view is, apparently, that when one does not know of a problem, one is never responsible for one’s failure to take corrective action, and one need not apologize, let alone resign from ministerial office.

Similarly, Chief Commissioner Antine claims not to have known about document tampering within the police force, as part of a wider cover-up of wrongdoing in connection with the police brutality/murder scandal, and claims that his ignorance excuses him from personal moral responsibility. For example, when asked by counsel for the Policegate inquiry about his accountability with respect to “allegations of alteration of documents” and “questions of leadership with respect to the processing of the access to information request”, Chief Commissioner Antine responded: “where I was not aware, I believe that I cannot be faulted”.

Chief Commissioner Antine claims that “when I was aware of any issue related to police wrongdoing or any other aspect of the public affairs dimension I took appropriate action”, and he asks us to consider him blameless for his failure to take action to correct a problem or set of problems of which he was not aware. Chief Commissioner Antine went on to state: “If I erred, I erred in trust, but I did not err when the matter was brought to my attention and not exercising proper action to ensure either compliance or changes within the organization so it wouldn’t happen again.”

Not everyone will agree with Chief Commissioner Antine’s view that officials are never blameworthy for the unintended consequences of their actions or omissions. Indeed, Chief Commissioner Antine himself seems to be of two minds about this. Although he pleads that “where I was not aware, I believe that I cannot be faulted”, he admitted earlier, in response to a question from the commission chair, that it is one of the responsibilities of a superior officer to “put in place the proper measures to stay informed”. Later in his response to the same question, he acknowledged further that a superior officer has the additional obligation, where the proper mechanisms have failed, to “ensure that as a follow-on they are complied with”.

To summarize, then, Chief Commissioner Antine seems to be saying that ignorance excuses, *tout court*. But, if we combine the various qualifications he offers at different points in his testimony, it would seem that

he himself recognizes, or comes close to recognizing, that ignorance, by itself, does not always excuse.

Self-Induced Ignorance

In particular, a police chief's ignorance of wrongdoing by his subordinates does not excuse him from personal blame if his ignorance resulted from either a failure to put proper information procedures in place or a failure properly to monitor compliance with the existing information procedures. Leaders who plead ignorance as their defence, must show, in other words, not only that they did not know of wrongdoing by their subordinates, but that they *could not reasonably* have known. They must demonstrate that their ignorance was not culpable.

If it should happen that the leader was instrumental in his or her own ignorance, then the leader will be blameworthy for that ignorance. Those who appeal to the defence of ignorance to excuse or to mitigate their wrongful conduct do not deserve to succeed in their pleading when the ignorance was self-induced.

Thus, whether Chief Commissioner Antine should be excused or blamed for his ignorance of the police brutality/murder cover-up or other associated wrongdoing on the part of his subordinates will depend upon whether he, in his various roles during the period under investigation, fulfilled his several obligations. Did he not foresee that serious wrongdoing might be concealed from him by his subordinates? If he did not, was this a culpable (perhaps negligent) failure of foresight?

Information Filtration

In large bureaucratic organizations much important information is filtered out long before it reaches the people at the top. In general, it might be expected that a prominent tendency in most bureaucracies would be to over-inform those above, so that should things go wrong, responsibility would also shift to those in more senior positions. But the volume of information may simply be too great to be communicated without substantial editing. Moreover, to admit to one's superiors that one has failed at an assigned task might be thought to risk damage to one's career.

Thus, in most large bureaucracies one can find countervailing tendencies operating simultaneously: the tendency of subordinates to over-inform their superiors, and their inclination to hoard information. The tendency to restrict the upward flow of information derives only in part from the

desire to avoid admissions of failure and thus to evade blame. Equally important, reluctance to tell all to the boss can be an important part of protecting the subordinate's power base. Information and its control bestow significant power in most organizations. Those who control information have the ability to control the organization's agenda. Those who control the organization's agenda gain potentially decisive power to shape outcomes.

So, in the interests of self-preservation and career advancement, middle and senior managers typically develop a finely-tuned instinct about what information should, and what should not, be passed up the line. These bureaucratic phenomena are typical even of well-functioning and healthy organizations.

In a poorly functioning organization — for example, one with a leader who is known to shoot the messenger when bad news is delivered — a different and even less reliable pattern of information transmission may develop. In dysfunctional organizations, there is typically a strong tendency on the part of subordinates to withhold important negative information from superiors. In extreme cases, subordinates may, occasionally or even frequently, resort to outright deception and lies.

If Chief Commissioner Antine assumed his position as chief of the Nordican police at a time when the former conditions prevailed, then the credibility of his claim that crucial information was not shared with him is dubious. If, on the other hand, dysfunctional conditions prevailed, then it could be argued that it was his role responsibility to identify the problem and take appropriate steps to encourage a climate of greater openness and honesty. If he took such steps and was still deceived by his subordinates, one might want to assess whether the steps met accepted standards of organizational management before deciding whether he had fulfilled his duty to the utmost and should therefore be exonerated.

POSSIBLE CORRECTIVE MEASURES

At the helm of a dysfunctional organization and aware of the tendency of subordinates to tell their superior only such information as they have been led to believe their superior wishes to hear, a competent leader can take several significant steps to counteract this dangerous tendency. At the least, leaders will want to emphasize to all their subordinates that they expect to be told the truth, even when it is embarrassing, politically inconvenient, or personally painful.

They will not only express and reiterate their desire to be informed fully and honestly but demonstrate by the pattern of their behaviour — for example, by the people they promote and reward and those they demote and punish — that they are serious about being properly informed and serious about compliance with laws such as those governing public access to information.

Ignorance: A Mitigating or an Aggravating Factor?

It could be argued, in mitigation, that a leader who fails to conform perfectly to the high standards just outlined is guilty of a venial rather than a mortal sin. After all, the chief of police has many serious responsibilities; ensuring that access to information inquiries are handled properly is but one, and possibly not the most important one at that. The buck, in practice, does not always stop only at the top. Given the realities of bureaucratic organizations, there may be multiple stopping places for the buck, that is, several senior officials, below the very top, whose responsibility is to monitor such things and ensure that problems either do not occur or are corrected.

'A Wink and a Nod'

A further factor may help to explain why information of certain kinds does not always reach high-level officials. Senior officials not uncommonly *want* to be kept in a state of ignorance with respect to certain developments. This desire can be communicated to their subordinates in a variety of ways, both direct and indirect; the subordinates then come to understand that certain kinds of immoral or illegal behaviour will be tolerated by their superiors so long as there is no official communication up the line.

Fans of Jean Anouilh's play *Becket* will recall that King Henry II did not feel it politic explicitly to condemn to death his enemy, Thomas à Becket, one-time Archbishop of Canterbury. The King was heard to muse aloud, however, in the presence of his loyal courtiers, "Will no one rid me of him? A priest! A priest who jeers at me and does me injury?"¹³ That was enough. The deed was as good as done. The overriding advantage of such 'direction via indirection' was that Henry was now blessed with what today is sometimes labelled the 'deniability factor'. He could assert, with at least the simulacrum of honesty, words to the effect that "I

was entirely ignorant of this dastardly deed, but I will discover who murdered him and punish them appropriately.”

Of course, organizations that permit such an ethos to prevail will also find it necessary to set boundaries on the kinds of illicit behaviour that is tolerated. One effective means of communicating this message is through the example set by the organization’s top leadership. Organizationally sophisticated leaders know that if they are seen by subordinates to be violating the spirit of certain legislation — say, for example, the access to information law — then subordinates will take from such resistance to disclosure the message that they, too, should take whatever steps are necessary to prevent embarrassing revelations from attracting negative publicity. (This is not to say that such troubling actions can never take place in organizations that practise a high degree of openness in the sharing of information. They can and do, but exceptionally rather than frequently.)

Thus, any ultimate assessment (‘verdict’) on the overall pattern of Chief Commissioner Antine’s conduct as a police leader will depend, crucially, on the evidence available about whether he did or did not provide the right sort of paradigm for his subordinates.

The Responsibility to Monitor Compliance

In addition to acknowledging a leader’s responsibility to “put in place the proper measures to stay informed”, Chief Commissioner Antine acknowledged a second responsibility: a leader’s obligation to monitor subordinates’ compliance with official policy. A leader with foresight would almost certainly anticipate that his subordinates might conceal rather than report cases of serious wrongdoing. Recognizing that such a pattern of concealment existed in the past and may, by now, have become a thoroughly ingrained part of the Nordican police culture, a “proactive” leader would implement thorough safeguards to prevent breaches or to detect the few that do occur despite the leader’s best efforts at prophylaxis.

It is not obvious from Commissioner Antine’s testimony that he fulfilled his responsibility carefully to monitor compliance with official police policy. Indeed, his admission that he himself violated the spirit of the Nordican legislature’s access to information laws suggests that his subordinate officers, aware of his attitudes and values, may have felt, directly or indirectly, some pressure to conceal police wrongdoing, even by resorting to illegal measures. Were this the case, Commissioner Antine’s putative “ignorance” would not serve to mitigate his individual moral

responsibility for the ensuing cover-up, for it would have been self-induced ignorance.

In sum, Commissioner Antine's account of his conduct pertaining to the police brutality/murder affair should address both whether he introduced proper policies and monitored their implementation diligently, and whether he was guilty of consenting by implication or connivance in the wrongdoing that occurred, by displaying behaviour that his subordinates understood reasonably to be 'a wink and a nod' in the direction of illegal concealment.

Ministerial Responsibility: The British Parliamentary Tradition

Because much of British constitutional law is unwritten, it is often difficult to state with confidence the exact nature of its leading principles and conventions. Despite (or because of) the enormous literature surrounding the doctrine of ministerial responsibility, there is still controversy about its central tenets. Moreover, since unwritten constitutional conventions have a tendency to evolve in response to changing circumstances, what was formerly an accurate description of ministerial responsibility may no longer correspond closely to present-day practice.¹⁴

A useful starting point for this discussion might be the following definition, offered by Sir Richard Scott, chairman of a recent British inquiry into the illegal export of defence equipment:

I would, if asked, have described ministerial accountability as a constitutional principle that required a minister to take responsibility for what was done or omitted in the department of which he or she was in charge.¹⁵

Scott goes on to state that "I would have associated ministerial accountability with a need for a minister to resign if serious errors had been committed in the department".¹⁶

Something like Scott's definition would probably describe accurately the interpretation of ministerial responsibility held, at least until comparatively recently, by most parliamentarians and scholars. Scott himself confesses, however, that his initial understanding of ministerial responsibility has undergone a significant transformation as a result of what he learned during his tenure as chairman of the inquiry.

Although it may still be, in certain restricted circumstances, an important part of ministerial responsibility that a minister resign from office when serious errors are committed, the perceived need for resignation is certainly not automatic. Indeed, in post-war Britain there have been

strikingly few cases in which ministers have resigned from office solely because of errors made by civil servants within their departments.

Clearly, ministers should be held responsible for seriously wrongful acts of their departmental civil servants when (1) the action of the civil servants was directly and explicitly responsive to an order from the minister, or when (2) the civil servant acted in accordance with departmental policy as laid down by the minister. In either of these cases, there would be little dispute that the minister should accept responsibility, in the sense of blame, for the actions of the civil servant; where the offence was sufficiently serious, the minister should resign.

But according to a former Lord Chancellor, Sir David Maxwell Fyfe, the case is very different when the minister is not personally culpable for what has gone wrong:

Where action has been taken by a civil servant of which the Minister disapproves and has no prior knowledge, and the conduct of the official is reprehensible then...[t]he Minister is not bound to defend actions of which he did not know, or of which he disapproves.¹⁷

Fyfe adds:

...of course, he remains constitutionally responsible to parliament for the fact that something has gone wrong, and he alone can tell parliament what has occurred and render an account of his stewardship.¹⁸

The key question that needs to be asked and answered, then, is "What is required of a minister who is not personally culpable but who is constitutionally responsible?"¹⁹ What constitutional convention should govern the responsibility of a minister when a serious error has been made for which he bears no personal blame whatsoever?

Sir Robin Butler, secretary to the British cabinet, sets out his answer to the closely related question, "What are the limits of ministerial responsibility?" as follows:

While Ministerial Heads of Department must always be accountable for the actions of their department and its staff, neither they, nor senior officials can justly be criticised for shortcomings of which they are not aware, and which they could not reasonably have been expected to discover, or which do not occur as a foreseeable result of their own actions.²⁰

Thus, even when a departmental manager or other executive officer has made a grave error, the minister should not be required to resign unless the minister is personally blameworthy, either directly in the commission of the error, or indirectly, through a failure to institute proper procedures within the department.

Some will view the causal divorce between departmental error and ministerial resignation as a sign of progress; others, such as Britain's 1986 Treasury and Civil Service Committee, see this development as an unfortunate weakening of the constitutional doctrine of ministerial responsibility:

The difficulty arises...with accountability for actions by civil servants... Not to put too fine a point on it, who ought to resign or be penalised if mistakes are made? If it is not Ministers, it can only be officials.²¹

The view that even personally blameless ministers ought to resign on account of civil service errors within their departments was also adopted by a 1994 Committee of the British House of Commons. In its report the committee declared flatly:

Ministerial preparedness to resign when Ministerial responsibility for failure has been established lies at the very heart of an effective system of Parliamentary accountability.²²

It should be noted that these two competing British views of ministerial responsibility correspond very closely to what we labelled earlier as the personal moral responsibility view and the role responsibility absolute liability view. Holding ministers absolutely accountable for mistakes within their departments may have the beneficial effect of inducing the highest possible standards of care. On the other hand, if we insist on ministerial resignation even when there is no personal culpability, we risk losing capable ministers, imposing a harshly unfair punishment on blameless individuals, and allowing those who are truly blameworthy to escape proper investigation.

On balance, when the situation is one in which the minister is entirely (or perhaps largely) blameless, it would be difficult to resist Scott's conclusion that

[i]t is not...the willingness of ministers to resign that lies at the heart of ministerial accountability but, rather, the obligation of ministers to give, or to facilitate

the giving, of information about the activities of their departments and about the actions and omissions of their civil servants.²³

When a minister fails to meet the obligations of ministerial accountability by failing to provide full and frank information about the activities of the department, such a failure undermines the democratic process. This point has application in a variety of settings, including the military.

Before leaving this topic, it is worth noting again a potential misreading of Scott's view that a minister cannot reasonably be blamed simply because something has gone wrong in the department of which he is in charge. This should not be read as absolving ministers of their responsibilities in staffing and supervising their departments. Ministers have a duty of accountability that requires that, when things go wrong, they should expect to be required to demonstrate *inter alia* that their management of the department was not a significant contributing cause of the failure. The obligation of ministers or other high-level officials to resign should remain intact in cases where they have failed seriously in the performance of their fiduciary obligations.

A CANADIAN PERSPECTIVE

As S.L. Sutherland has demonstrated convincingly, the debate concerning a minister's obligation to resign when departmental officials blunder badly has about it, at least for Canadians, an aura of unreality. Her comprehensive study of ministerial resignations since Confederation discovered only two cases in which ministers "took responsibility" by resigning for maladministration within their own portfolio.²⁴ That is, during the entire history of Canada, out of a grand total of 151 ministerial resignations, only twice was the resignation clearly attributable to ministerial acceptance of absolute role responsibility.

Several additional resignations, however, could reasonably be attributed to ministers accepting responsibility in the personal responsibility/individual blameworthiness sense of responsibility.

For better or worse, in the Canadian political system there has historically been no role whatsoever for the parliamentary opposition — however great its indignation — to force a minister to resign for errors attributable to civil servants.

The opposition can force a resignation only when it can make a case as to lack of personal ethics or probity of a kind for which the minister's own colleagues

and the prime minister *refuse* to extend the protection of collective responsibility, or where the cabinet cannot extend solidarity because the government is in a minority.²⁵

Several accountability initiatives in recent Canadian parliamentary experience (most notably the McGrath report of 1985) have attempted in various ways to enhance the role of backbenchers in Parliament. The starting point for the McGrath report, for example, was that

The idea of a minister being responsible for everything that goes on in a department may once have been realistic, but it has long since ceased to be so. A minister cannot possibly know everything that is going on in a department. The doctrine of ministerial accountability undermines the potential for genuine accountability on the part of the person that ought to be accountable — the senior officer of the department.²⁶

The major thrust of the McGrath proposals was to locate departmental responsibility increasingly with top civil servants, in particular with deputy ministers. A major problem with this proposal, however, is that the admirable attempt to introduce significant administrative accountability mechanisms is not easily reconciled with the well established parliamentary convention insisting that public servants must be non-partisan and anonymous.

A second serious problem arises from the fact that no magical 'red line' is available to distinguish matters for which the minister should be accountable from those for which the deputy minister or other top official(s) should be accountable. Even in a country such as Canada, with a highly professional, highly trained permanent cadre of administrators, there is something naïvely artificial about the conventional assumption that ministers are exclusively responsible/accountable for policy, while civil servants handle only administrative tasks. In the real world, inevitably, ministers are often concerned with details of administration and policy implementation, while their top civil servants are involved, at least to some considerable extent, with the formation of policy as well as with its implementation. Separating politics from administration is a mug's game.

Thus, the Canadian parliamentary system appears to have reached an impasse. The conventional doctrine of ministerial responsibility has been weakened dramatically although, arguably, it has not yet been entirely eviscerated. Vast and important departments of state seem scarcely accountable either to Parliament or to the general public. At the same time,

proposals for drastic reform are greeted with sceptical fears that if we abandon the Westminster model of ministerial responsibility entirely, we may undermine the integrity of our democratic system: "It is...through the minister that the democratic loop of accountability to the electorate is closed."²⁷ Weak links of accountability are better than the alternatives, it might be argued, and certainly better than none at all.

APPLYING THE FOREGOING ANALYSIS

One would expect that, when a systematic pattern of untoward events occurs in a government department, the cabinet minister who is ultimately responsible will be able and willing to account publicly for what has gone wrong and to justify his performance of his ministerial role responsibilities. If he cannot justify his actions or failures to act, then he ought to acknowledge his personal responsibility and blameworthiness and apologize. In Canada, one might argue, it is the loss of political status and reputation that now constitutes the major sanction for ministerial performance failure. Only when the personal failures are undeniably serious will the current conventions of ministerial responsibility dictate that the minister resign. Perhaps it is time to consider whether the current conventions need to be restored to their former toughness. This analysis is particularly apt when we consider the values of the military in a democratic society.

The Values of the Military in a Democratic Society

THE MILITARY IN A DEMOCRATIC SOCIETY: VALUES IN CONFLICT

The culture of liberal democracy places central importance on such values as individuality, autonomy, and openness. By contrast, it seems inherent in the nature of military organizations that they tend to place highest emphasis on a very different set of values, including group loyalty, rigid obedience to superior orders, and strict discipline. This divergence of values between a democratic community and its armed forces almost inevitably creates a situation of tension.²⁸

The Canadian Armed Forces, like its counterparts in Britain and the United States, is experiencing a worrying dislocation from the society it serves. No one should be surprised to discover that armed forces tend to be markedly different from civilian societies; but recent developments threaten to widen a gap into a chasm. Indeed, recent struggles around such issues as making a place for women in the forces, perhaps even in combat roles, sexual orientation, and racism highlight such questions as whether traditional military values are consistent with contemporary social and legal changes.

How different from the rest of society is the army entitled to be? Will civilian society continue to permit the military to impose, unconstrained, its own ethos? It can be said, without exaggeration, that the combination of the end of the cold war and sweeping social change has generated an acute identity crisis for the military in every western liberal society. It is doubtful, in these 'peacetime' circumstances, that the traditional institutional culture of the military can survive without significant modifications, especially when enterprising journalists regularly capture on film and muckraking magazines regularly display on their front pages military values run amok. Indeed, it is not only the muckrakers who rake this

particular muck. Mainstream media outlets, both newspapers and television, regularly confront the public with horrifying images of military misdeeds.

The central underlying issue was stated nicely by Kim Krenz, who wrote in a recent letter to *The Globe and Mail*, "...the ethos of any effective military organization must be at odds with the caring, compassionate, 'politically correct' society that Canada aspires to be."²⁹ Notwithstanding the current trend toward using the military to perform an international peacekeeping role, members of the armed forces will have, in some situations, a professional obligation, as soldiers, to engage in killing and destruction. Not to put too fine a point on it, education in professional military ethics includes the transformation of young people into trained killers. To an important degree, it is the intense loyalty developed in small military groups that motivates soldiers to face serious dangers and endure intense hardships in the line of duty.

It is an easy step from intense group loyalty to the we/they adversarial model, which collectively unites military personnel against what they see as civilian outsiders. The latter are believed to be incapable of genuinely comprehending military culture. Because civilians are incapable of understanding the lived experience of military life and work, civilian control over the military can easily excite a degree of resentment; this in turn can easily express itself in concealment and cover-up.

For good reasons, loyalty and obedience have been regarded traditionally as the highest military virtues. As Alfred T. Mahan puts the point, "The rule of obedience is simply the expression of that one among the military virtues upon which all the others depend."³⁰ Instant unquestioning obedience must be inculcated in military personnel as a prime virtue, it is argued, because military necessity often requires that soldiers act rapidly and in concert. Delay or hesitation could be fatal. Obedience to one's military superiors and loyalty to one's comrades can, of course, easily express itself in concealment or cover-up of their wrongdoing.

Few authors have offered a more strict construction of the supreme value of military obedience than Samuel P. Huntington:

When the military man receives a legal order from an authorized superior, he does not argue, he does not hesitate, he does not substitute his own views; he obeys instantly. He is judged not by the policies he implements, but rather by the promptness and efficiency with which he carries them out. His goal is to perfect an instrument of obedience; the uses to which that instrument is put are beyond his responsibility. His highest virtue is instrumental not ultimate.³¹

Huntington's emphasis on the overriding value of instant obedience and total loyalty seems not inappropriate, given the fundamental *telos* of the military: the responsibility to manage violence in such a way as to protect society against organized external military threat.³²

It is important to note, however, that even Huntington qualifies his version of the military ideal with the words "legal" and "authorized". That is, instant obedience is owed only to *legal* orders issued by an *authorized* superior. This qualification highlights the crucial subordination of the military to the rule of law. Ultimately, the loyalty of every officer and soldier in the armed forces of a democratic society must be to the rule of law, as even Samuel Huntington, with his extreme emphasis on the military virtue of perfect obedience, is compelled to admit.

PERSONAL INTEGRITY AS THE HIGHEST MILITARY VALUE

Consider, in this context, the eloquent comments of U.S. Senator Hughes of Iowa. Senator Hughes' remarks were made in the course of opposing promotion for officers whose loyalty to their military superior had led them to participate in false reporting, as part of a cover-up of transgressions against national policy:

I could not rest easy if I thought that one of these men who knowingly participated in this false reporting might one day become chairman of the Joint Chiefs of Staff. The integrity of our command and control structure, both within the military and under civilian authority, depends upon men of the highest character, whose obedience to our laws and the Constitution is unquestioned... If we choose to reward these men with promotions, what will the consequences be? ...Will the officers down the line conclude that loyalty and obedience within one's service are more important than adherence to the higher principles of law and civilian control of the military?³³

Note well Hughes' phrase "men of highest character" or, as we would say today, "men and women of highest character".

In effect, Senator Hughes is defending two important values for the military: the value of moral integrity and the value of democratic accountability. His key point is that even in a strictly hierarchical authoritarian organization, like the military, the ultimate value must be obedience to the law, that is, to civilian control. His ancillary point is that unless we inculcate good moral character (integrity) in military personnel, effective

military performance will be undermined and, equally important, democratic civilian control over the military will be threatened.

Without an effective command and control structure, the monopoly of force vested in the military could potentially undermine civic society, the protection of whose values provides the *raison d'être* for having a military in the first place. When the military is unconstrained by civilian control, or when the military appropriates for itself the determination of what the limits of that control will be, we have left the realm of democracy and entered the realm of military dictatorship.

The integrity of the command and control structure requires full and accurate disclosure of information. Moral integrity — which includes truthfulness as a major component — must begin with the lowest ranks, who report to their immediate superiors, and should carry on right to the top of the military hierarchy, where the rule of law requires that there be civilian control. Even more important, moral integrity requires of those at the very top of the military chain of command that they deal truthfully with the civilians (cabinet ministers and high civil servants) to whom they are accountable for their actions and for the overall good running of the armed forces.

At the lower levels of military command, lack of integrity produces, among other bad consequences, dishonest reporting; and dishonest reporting is often responsible for causing much avoidable harm, including injury and death. At the higher levels of military command, dishonest reporting can result in military disaster on a scale sufficient to threaten national security. It can also threaten democratic control of the military, which poses a different but no less serious danger to national security.

Thus, Huntington's insistence that the values of obedience and loyalty are central to the military ethic must be seen as needing to be framed by a wider commitment to the value of personal moral integrity: "Integrity would appear to be one of those critical moral qualities which makes loyalty and obedience possible".³⁴

It may be useful to reiterate a point developed at some length earlier in this essay, in the context of the culture of bureaucratic civilian organizations. In military, as in civilian life, the promotion of moral integrity is best achieved through encouragement and example.³⁵ For this reason, when a high-ranking officer violates the spirit of a fundamental law promoting transparency and accountability, his behaviour threatens to undermine a basic value of military ethics. Even though he may, technically, have done nothing strictly illegal, his violation goes to the heart of the democratic accountability of the military.

CONCERN FOR IMAGE: AN ARMED FORCES PATHOLOGY?

Military Culture, Military Values, Military Ethos

None of us is a purely atomistic individual bouncing around in the void. We are all, to a greater or lesser extent (and usually greater rather than lesser), shaped by the culture in which we live and work. Not only our attitudes and values but also our very identity as individuals are profoundly shaped and influenced by institutional norms and structures.

Individuals who join the military are subjected to such a powerful and prolonged military socialization process that their group identity as soldiers or officers may easily overwhelm prior socialization in the less intensely inculcated values of civilian culture.

The diversity and plurality of values typically found in liberal democratic society contrast sharply with the homogeneity of values and norms in the culture of the military. Such value differences can easily support a mutual lack of understanding and respect between the military and the rest of society amounting, at times, to alienation. The fact that members of the military tend to live separately from civilian society and socialize largely within the ranks of the military has the effect of distancing military personnel more profoundly from the rest of the community. It also enhances bonds of loyalty, both horizontally, with peers, and vertically, with one's superiors.³⁶

There is, of course, some diversity of views and values within the military, and it would be simplistic to claim that there is a single military culture or military ethos. There will likely be significant differences between the branches of the military and between units in each branch. In addition to this 'horizontal' diversity of values, there are also likely to be significant 'vertical' differences of culture and value as one moves from the highest ranks in the hierarchy toward lower-rank officers and ordinary soldiers. Despite such differences, both horizontal and vertical, there will be many situations, especially when the military is seen to be under attack from outsiders presumed to be ignorant of military norms and values, when virtually all members of the armed forces can be expected to bond together cohesively to defend their way of doing things from outside interference.³⁷

Image Obsession: The Problem of Misdirected Loyalty

Organizations that are highly authoritarian in structure, especially those that place great emphasis on rigid discipline and group loyalty, are systematically vulnerable to abuse of power and obsession with image. As the psychologist Philip Flammer has noted, "Many in the military seem to operate under the dubious assumption that criticism, even internal criticism of the highest order, is a form of disloyalty."³⁸

Of course, an acute concern for image is not a problem confined exclusively to the military. Every organization wants to be seen in the best possible light; all administrators seek to avoid bad publicity. Organizational loyalty is frequently interpreted as requiring from members of every rank a willingness to conceal unpleasant truths or even, occasionally, to cover up information that would damage reputations if revealed. However, the organizational deformity of obsessive concern for image tends with uncomfortable regularity to characterize 'closed' societies, such as the military (and the police).

A full explanation for this worrying phenomenon is beyond the scope of this essay, but some tentative assertions will be offered *pro tem*. I will pass over, without comment, the widely canvassed explanation that power corrupts and that the degree of corruption increases as power does. This explanatory thesis doubtless contains important elements of truth. But other important factors deserve our attention.

If the military is to perform its primary role of protecting society against external threats of violence, it must create and sustain an organization in which soldiers have sufficient trust in their officers, and officers sufficient trust in their superiors, to go into battle at the risk of their very lives. To trust another person, or even an organization, with one's life requires no little confidence in the ability of the person/organization to minimize exposure to unnecessary risks. It may even require a level of confidence that borders on magical thinking. To sustain such confidence over time, the organization and its officials may strive to create, both internally and externally, the appearance of infallibility.

Alas, as discussed earlier, fallibility is an inescapable feature of human life and *a fortiori* the life of every human organization. Since imperfection marks every human creation, the need to appear infallible carries with it the need to cover up evidence of errors, mistakes, blunders, miscalculations, and downright incompetence, not to mention greed, corruption, venality, careerism, and other moral flaws. Thus, the military system cannot hope to succeed in its efforts to appear infallible without

dogmatically rejecting ample evidence to the contrary and covering up, through lies and deception, such evidence as would expose the unreality of their pretensions.

This explains, at least to some considerable extent, why the military seems so often to be involved in concealment and deception. It explains, but of course it does not justify. The benefits of burying mistakes, using concealment and deception, are more immediately apparent to many in the military ruling elite than are the drawbacks. Properly calculated, however, the latter may far outweigh the former, at least in the long run.

ERRORS AND MISTAKES: THE NEED FOR A NEW ETHIC

The myth of military infallibility requires, at least on the part of commanding officers, a “zero error mentality”.³⁹ In other words, the undoubtedly worthy goal of pursuing excellence in the military translates into the dangerously unrealistic expectation that commanders should never be guilty of error or mistake. In its most extreme form this mentality would condemn even non-culpable errors (‘misfortunes’).

That such a wrong-headed doctrine could produce far more negative than positive consequences for military performance is unsurprising. For a start, the pretence of infallibility produces massive hypocrisy. Dishonesty and dissimulation become the norm rather than the exception. Cover-up becomes a way of life rather than a rare exception. Careerism displaces professionalism, and moral corruption becomes pervasive.

Equally important, unless mistakes are acknowledged and analyzed, those who make them cannot learn the appropriate lessons.

Interestingly, the medical profession, whose mistakes, like those of the military profession, are also often a matter of life and death, have problems similar to those of the military when it comes to admitting mistakes. Writing of the medical profession, but with words that apply no less forcefully to the military, McIntyre and Popper state:

Our new principle must be to learn from our mistakes so that we can avoid them in future; this should take precedence even over the acquisition of new information. Hiding mistakes must be regarded as a deadly sin.⁴⁰

Moreover, progress will be slow indeed if each of us can learn only from our own mistakes. We have to encourage each other not only to be self-critical in identifying our mistakes, but to be willing to draw our mistakes to the attention of others.

Even those who are able to confront their own mistakes honestly, without self-denial, may balk at drawing the attention of others to their errors. The problem is, however, that only when the mistakes made by various individuals in an organization are identified and pooled can underlying causal patterns be detected. Thus, unless individuals are willing to pool and analyze their errors, systemic problems may well go undetected, and the organization will be unable to develop workable strategies to minimize the likelihood that similar errors will occur in future.

In a truly professional armed forces, accountability would be understood to impose on every soldier, but especially every officer, the obligation to improve standards in the military. Effective performance of military duties, at every level of the hierarchy, requires that there be in place an effective system for monitoring and judging and, where necessary, changing and improving the way things are done. Concern for image ought to be subordinate to concern for professional integrity. In the long run, of course, these two *desiderata* may be found happily to coincide. In the short run, however, they may often appear to be adversaries.

In sum: where the prevailing ethos within an organization is one of intolerance, and where criticism generally means condemnation rather than mutual respect, one can expect to find, concomitantly, an ethos of deception and cover-up. An ethos of deception and cover-up is not only morally undesirable, it is also inconsistent with effective performance of duties. In the military, when errors go uncorrected because undetected, this can easily lead to avoidable loss of life or, in extreme cases, even to military disaster. Equally important, an ethos of deception and cover-up is inconsistent with a democratically accountable military in a liberal democratic society.

This discussion of the need for a new ethos with respect to admitting mistakes suggests that second thoughts are required on the subject of the virtue of loyalty. As the military historian Basil Liddell Hart wisely observes, loyalty is a "noble quality, so long as it is not blind and does not exclude the higher loyalty to truth and decency."⁴¹

Notes

- 1 Editorial, *The Orb and Post*, 22 August 1996. See Appendix 1 for the complete text of the editorial.
- 2 When Chief Commissioner Antine used the term “moral fibre” in his testimony before the commission, he appears to have meant something like “the courage to be honest”. But the concept of moral fibre, as used by the military in both world wars, seems to have referred more typically to a particular military virtue — an especially high level of courage and stamina in the performance of one’s duties.
- 3 *The Orb and Post*, 22 August 1996.
- 4 See J.T. Stevenson, *Engineering Ethics: Practices and Principles* (Toronto: Canadian Scholars’ Press, 1987), pp. 69-75, for a fuller elaboration of “responsibility systems”.
- 5 J.T. Stevenson, private communication with the author.
- 6 For an unwitting example of such muddle see, for example, Humphrey Sears, *The Orb and Post*, 8 January 1997.
- 7 Max Weber, “Politics as a Vocation”, in *From Max Weber: Essays in Sociology* (New York: Oxford University Press, 1958), p. 95.
- 8 Letter from the Former Minister of Food to the Royal Commission on the Food System in Nordica, 19 August 1996. See Appendix II for the complete text of the letter.
- 9 H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Oxford University Press, 1968), p. 152.
- 10 Hart, *Punishment and Responsibility*, pp. 136-157.
- 11 See Peter A. French, ed., *Individual and Collective Responsibility: Massacre at My Lai* (Cambridge, Mass.: Schenkman Publishing Company, 1972).
- 12 Editorial, “Culture of Coverup”, *The Ottawa Citizen*, 15 August 1996, p. A10.

- 13 Jean Anouilh, *Becket*, Act IV, translated by Lucienne Hill (London: Methuen, 1961), p. 110.
- 14 Colin Turpin, "Ministerial Responsibility: Myth or Reality?" in *The Changing Constitution*, ed. J. Jowell and D. Oliver, third edition (1994).
- 15 Sir Richard Scott, "Ministerial Accountability", in *Public Law* (London: Sweet and Maxwell Ltd., Autumn 1996), p. 410.
- 16 Scott, "Ministerial Accountability", p. 410.
- 17 Sir David Maxwell Fyfe, House of Commons Debates, column 1285 (20 July 1954), as quoted in Scott, "Ministerial Accountability", p. 411.
- 18 Fyfe, Debates, columns 1286–1287, as quoted in Scott, "Ministerial Accountability", p. 412.
- 19 Scott, "Ministerial Accountability", p. 412.
- 20 Testimony before the Scott Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq, 9 February 1994, Transcript, pp. 22–23, quoted in Scott, "Ministerial Accountability", p. 413. The British government has set out its view of ministerial responsibility and accountability in *The Civil Service: Taking Forward Continuity and Change*, Cm. 2748 (January 1995).
- 21 Treasury and Civil Service Committee, *Civil Servants and Ministers: Duties and Responsibilities, 1985–1986*, Seventh Report of the Committee, House of Commons 92II, paragraph 313, quoted in Scott, "Ministerial Accountability", p. 415.
- 22 Treasury and Civil Service Committee, *The Role of the Civil Service*, Fifth Report of the Committee, House of Commons, 1993–94, 27–I, paragraph 133.
- 23 Scott, "Ministerial Accountability", p. 415.
- 24 S.L. Sutherland, "Responsible Government and Ministerial Responsibility: Every Reform Is Its Own Problem", *Canadian Journal of Political Science* XXIV/1 (March 1991), p. 103.
- 25 Sutherland, "Responsible government", pp. 104–105.
- 26 *Report of the Special Committee on Reform of the House of Commons* (Ottawa: Queen's Printer, 1985), p. 21.
- 27 Sutherland, "Responsible government", p. 120.
- 28 Philip M. Flammer, "Conflicting loyalties and the American military ethic", *American Behavioral Scientist* 19/5 (May/June 1976), pp. 589–590.
- 29 *The Globe and Mail*, 8 January 1997.
- 30 As quoted in Samuel P. Huntington, *The Soldier and the State* (Cambridge, Mass.: Harvard University Press, 1957), p. 73.
- 31 Huntington, *The Soldier and the State*, p. 73.

- 32 Samuel P. Huntington, "Officership as a Profession", in *War, Morality, and the Military Profession*, ed. M.M. Wakin (Boulder, Colorado: Westview Press, 1979), p. 19.
- 33 United States Senate, Congressional Record, 1974, p. 56258, quoted in M.M. Wakin, "The ethics of leadership", *American Behavioral Scientist* 19/5 (May/June 1976), p. 578-579.
- 34 Wakin, "The ethics of leadership", p. 579.
- 35 General John D. Ryan, *Study on Military Professionalism* (Carlisle Barracks, Pa.: US Army War College, 1970), pp. 40-41.
- 36 See John Kleinig, *The Ethics of Policing* (New York: Cambridge University Press, 1996), pp. 67-81, for a parallel discussion of the institutional culture that shapes the ethics and values of police officers.
- 37 For a discussion of closely related phenomena in the police, see Kleinig, *The Ethics of Policing*, pp. 68-71.
- 38 Flammer, "Conflicting loyalties", p. 590.
- 39 Flammer, "Conflicting loyalties", p. 597.
- 40 Neil McIntyre and Karl Popper, "The critical attitude in medicine: the need for a new ethics", *British Medical Journal* 287/24-31 (December 1983), p. 1920.
- 41 Basil Liddell Hart, *Why don't we learn from history* (New York: Hawthorn, 1971), pp. 30-31.

Editorial, *The Orb and Post*, Thursday,
August 22, 1996

A RETURN TO MINISTERIAL RESPONSIBILITY

There was a curious intersection of events on Tuesday, converging on the theme of official responsibility, a virtue out of fashion these days. There, before our incredulous eyes, was the highest-ranking officer in the Nordican National Police Force blaming his subordinates for tampering with documents and thwarting the law. And there, in startling contrast, was a former Minister of Food insisting on part of the responsibility for Nordica's tainted food supply.

When the chief commissioner and the minister addressed their respective inquiries on Tuesday, they said more than they knew. Their comments revealed not only the nature of their character but also the evolution of values. The contrast was not encouraging for those who believe in progress.

Adam Antine, the Chief Commissioner of Police, said that his officers "lacked integrity...and moral fibre." He condemned them for withholding information from him. It may be that his officers did frustrate the investigation into the police brutality and murder, for which they should be disciplined. But that isn't the question here. The question is Chief Commissioner Antine's responsibility, as the top officer in the national police force, and his willingness to accept responsibility for what happened on his watch.

Chief Commissioner Antine doesn't seem much interested in that kind of thinking. He allowed that if senior officers took the blame every time their subordinates made a mistake, there would be no senior officers... "no leadership". He said it wasn't his fault that he didn't know about the actions of others. If he were considered responsible, he said, the government would have reassigned him long ago.

This, then, is CC Antine's view of official responsibility. It seems to be: "If I didn't do it, it's not my fault. The minister and the Prime Minister agree with me. So shove off, commissioners!"

The other view of accountability comes from Maya Culpa, who was Minister of Food in the Peters government. In an unsolicited letter to the Beaver Inquiry, Ms. Culpa says that, as the minister, she should *not* be absolved of responsibility. Rather, she said she was prepared to accept it, so much so that she may be waiving the immunity offered her by the court. "Justice is offended if people at the top of government in bureaucratic structures are not held responsible for their actions, but employees at less senior levels of the hierarchy are. Moreover, public ethics requires that those at the top be accountable."

Of course, Ms. Culpa was a politician. Mr. Antine is a police officer. In the police force, the chain of command is explicit. In politics, it is less defined. But the principle of accountability applies in both contexts, which is to say that the people at the top are ultimately responsible for the actions of all those under their authority — especially in the police force.

For years it has been open season on ministerial responsibility in Nordica. In 1991, a former foreign affairs minister blamed her senior officials for granting a one-time Iraqi ambassador a permit to enter Nordica. The minister dressed down her deputies before a parliamentary committee, which a former clerk of the Privy Council called the worst assault on ministerial responsibility in memory. More recently, Justice Minister Allan Stone expressed no personal responsibility for the provocative actions of his assistant deputy minister in advising a judge about a case before the courts.

The courageous — indeed, inspiring — intervention of Ms. Culpa is a potent antidote to a malaise in government that discourages an appropriate sense of responsibility. CC Antine, *nota bene*.

APPENDIX II

Letter from the Former Minister of Food to the
Commissioner, Royal Commission on the Food
System in Nordica

August 19, 1996

Sir:

I served as Minister of Food from September 1976 to September 1984 with a short interruption of nine months in 1979-1980. I did so with pride, commitment and resolve, assuming the heavy responsibilities vested in me by the Prime Minister to the best of my abilities. These responsibilities included dealing with the advent of food poisoning in Nordica.

Like other Nordicans, I find most tragic the suffering and deaths of persons who consumed contaminated food and the pain of their families and friends.

It was with total surprise that I learned of your lawyers' announcement to not 'name' in your report any minister of food, federal or provincial, nor any deputy minister or assistant deputy minister. It came, moreover, as a shock to me that, on the other hand, two individuals who worked for my Department and one who undertook extensive volunteer public service as the Chair of the National Advisory Committee on Tainted Juice — a committee which I created — would be 'named'. In truth, blame has already been assigned to them in public opinion because of the various legal procedures and extensive media coverage which followed.

I believe that these individuals, and my Department in general, are blameless and that they served Nordicans with great professionalism, unquestionable competence and total integrity. However, if you were to have to lay blame, I consider it my duty to take my share of responsibility.

The notion of 'ministerial responsibility' is the cornerstone of our executive government. Justice is offended if people at the top of government or bureaucratic structures are not held responsible for their actions, but employees at less senior levels of the hierarchy are. Moreover, public ethics requires that those at the top be accountable. But I am writing to you today not only as an ex-Minister but also as a matter of personal morality and integrity. I cannot speak for deputy ministers and assistant deputy ministers whose job it is to manage ministries and who are paid for these responsibilities, reporting for them to both the Prime Minister through the Clerk of the Privy Council and to their respective Minister. But politicians must definitely be accountable and I am therefore prepared to join the 'named' people to answer the inquiries of your Commission.

Yours truly,

The Hon. Maya Culpa

The Buck Stops Here

Reflections on Moral Responsibility, Democratic Accountability and Military Values

Arthur Schafer

This study provides a conceptual analysis of the ideals of responsibility and accountability. It asks and tries to answer such questions as: when is it legitimate to blame top officials of an organization for mistakes made by personnel below them in the bureaucratic hierarchy? When things go wrong in a large complex organization such as Canada's armed forces, who is responsible? who is accountable? who is to blame? When, if ever, is a plea of ignorance — "I just didn't know about the cover-up" — a good excuse?

The study also analyzes the doctrine of ministerial responsibility in both the British and Canadian parliamentary traditions. Is it realistic to expect that a minister of government should be held responsible for everything that goes wrong in his or her department?

Finally traditional military values are examined. What attitudes and values do we expect from Canada's armed forces? How different do we want them to be from us? The study concludes that a new military ethos is needed if we wish to achieve the goal of effective civilian control over Canada's armed forces.

ARTHUR SCHAFFER is Professor of Philosophy at the University of Manitoba and Director of the University's Centre for Professional and Applied Ethics. He specializes in moral, social and political philosophy and has published widely in all these fields.

Commission of Inquiry
into the Deployment of
Canadian Forces to Somalia

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